customer approval, including oral approval.[65] Furthermore, according to MCI, this disclosure "must be made as to any customer giving her approval for such disclosure to another entity, whether or not the [ILEC] has disclosed that customer's CPNI to the affiliate or the [ILEC] or its affiliate has used that customer's CPNI for marketing."[66]

GTE disagrees with MCI's assertion that a non-discrimination right and disclosure obligation is mandated by Section 201(b) and 202(a) of the Act. There is no justification to conclude as a matter of statutory construction that the broad non-discrimination requirements of these statutory sections impose a specific disclosure obligation under Section 222. Indeed, Section 222 imposes a duty on telecommunications carriers to "protect the confidentiality of proprietary information of . . . customers" and further generally limits a carrier's ability to disclose CPNI where it is required to do so by law, where the customer has approved of the disclosure, or under specific circumstances enumerated by statute.[67] Requiring an ILEC to disclose CPNI to a third party merely based upon that party's oral representation that a customer has authorized the release of his CPNI would impermissibly erode the protections of Section 222 envisioned by Congress. In addition, such a rule would remove carriers' ability to obtain adequate and reasonable assurance that the consumer did, in fact, give approval for the release of CPNI. Nothing precludes MCI and other parties that seek to use CPNI for marketing purposes from either obtaining a customer's written approval or

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65 MCI Petition at 19; *see also id.* at 9.

66 MCI Petition at 10. Although MCI discusses disclosure in the context of adopting a non-discrimination requirement for BOCs under Section 272, it refers to this discussion in the context of advancing such a requirement for ILECs. *See id* at 19.

67 47 U.S.C. § 222(a), (c)(1).

asking prospective customers to provide oral authorization for the release of CPNI directly to their carrier.[68]

Along similar lines, the Commission should reject MCI's clear attempt to obtain a "non-discriminatory right" to use CPNI by requesting that the agency "specifically reconfirm that CPNI and other customer information constitutes 'information . . . used in the provision of a telecommunications service' and thus an unbundled network element (UNE) that BOCs and other ILECs must provide to all requesting carriers under Section 251(c)(3) of the Act." However, there is no basis to adopt MCI's suggestion that "to the extent they have not already done so, ILECs should be required to negotiate, as part of such agreements, provisions ensuring that an ILEC's use or disclosure of CPNI automatically triggers requesting carriers' access to CPNI under the same terms and conditions."[69] The Commission has defined the scope of ILECs' obligations to provide access to UNEs under Section 251 in its *Local Competition* decisions and MCI has offered no justification for revisiting those decisions in the context of this proceeding.[70]

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[68] In addition, GTE urges the Commission to reject MCI's argument that a carrier should be permitted to disclose CPNI, without customer approval, to enable a second carrier to "initiate" service and that non-discrimination rules also should apply to carriers' disclosure of CPNI for the initiation of service. *See* MCI Petition at 23-33. Contrary to MCI's claim, Section 222 carefully prescribes the disclosure of CPNI and the Commission already has determined that unauthorized disclosure of this information to third parties where a customer has changed providers is not mandated by the statute. *Second CPNI R&O* at 8125-26.

[69] MCI Petition at 22-23.

[70] *See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499 (1996) (subsequent history omitted).

B. The Commission Should Not Exclude PIC and PIC Freeze Information from the Definition of CPNI.

MCI also argues that "as soon as an ILEC uses or discloses non-CPNI customer information to its interexchange affiliate, it should transmit such information to all requesting entities."[71] MCI includes "subscriber's primary interexchange carrier (PIC) choice and so-called 'PIC-freeze' information" within the scope of such non-CPNI customer information.[72] GTE disagrees.

The plain language of Section 222 supports the view that PIC and PIC-freeze information is included within the statutory definition of CPNI. In particular, Section 222(f)(1) defines CPNI in part as (1) "information that relates to the quantity, technical configuration, type, destination, and amount of use of a telecommunications service subscribed to be any customer . . . and that is made available by virtue of the carrier-customer relationship" and (2) "information contained in the bills pertaining to "telephone exchange service or telephone toll service" received by the customer.[73] This statutory language belies MCI's contention that PIC and PIC-freeze information is not properly classified as CPNI.

Since a customer's preferred carrier is indeed listed – as MCI acknowledged – directly on that customer's telephone bill, MCI's arguments that PIC information is excluded from the definition of CPNI are strained at best. In addition, contrary to MCI's assertion, PIC-freeze information relates to the "type" of subscribers'

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71 MCI Petition at 20.

72 MCI Petition at 14.

73 47 U.S.C. § 222(f).

telecommunications service because it clearly indicates a customer's preferred treatment for how service changes should be accomplished. Given the privacy and consumer protection interests at stake, PIC and PIC-freeze information is precisely the type of information that customers want to be kept confidential from third parties. Accordingly, GTE urges the Commission to reject MCI's attempt to exclude these items from the scope of Section 222 and the customer safeguards established by the statute.

V. THE COMMISSION SHOULD ONLY GRANDFATHER CUSTOMER APPROVALS WHERE THE CARRIER GAVE WRITTEN NOTICE OF CPNI RIGHTS AND RECEIVED WRITTEN APPROVAL.

AT&T requests the Commission to grandfather existing approvals obtained by carriers prior to the release of the *Second CPNI R&O*.[74] GTE believes that certain approvals should be grandfathered, but only under circumstances where the carrier can demonstrate that the customer's approval is written and the customer was previously informed in writing that consent would allow the carrier to share or disclose his CPNI. Requiring written notification that CPNI would be shared or disclosed with the customer's written consent, as a condition of grandfathering a durable consent, even if such notice was not precisely as specified in the subsequently-adopted rules, will give assurance that customers in fact knew what their rights were under Section 222. A mere statistical showing that some customers did not approve use of CPNI does not prove that customers knew their rights. Moreover, requiring written consent will give assurance that the carrier actually obtained the consent even though the subsequently-adopted rules regarding verification of consents were not followed.

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[74] AT&T at 18-22.

VI. CONCLUSION

For all of the foregoing reasons, the Commission should reconsider the *Second CPNI R&O* and eliminate those rules that impair competition and reduce customer choice.

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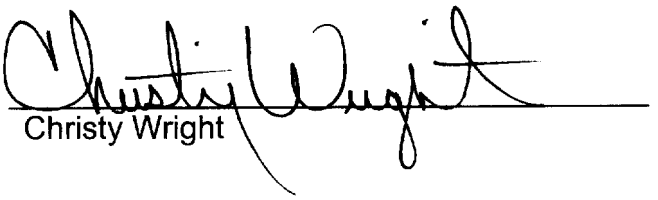

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